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**Silver Cross Hospital and International Union of Operating Engineers, Local 399, AFL-CIO. Case 13-RC-21277**

June 26, 2007

**DECISION ON REVIEW AND ORDER**

BY MEMBERS LIEBMAN, KIRSANOW, AND WALSH

On February 2, 2005, the Regional Director for Region 13 issued a Decision and Direction of Election finding that the petitioned-for unit of skilled maintenance employees was appropriate under the Board's rule for acute care hospital bargaining units. Thereafter, the Employer filed a timely request for review, contending, among other things, that the information services employees should be included in the unit. On March 2, 2005, the Board<sup>1</sup> granted review and remanded the case "solely with respect to the Regional Director's exclusion of the classifications in the Employer's Information Services Department from a unit of skilled maintenance employees." Subsequently, the Regional Director issued a Supplemental Decision and Direction of Election, in which he found, in agreement with the Employer, that the positions of computer operator, electronics technician, and PC analyst should be included in the skilled maintenance unit.<sup>2</sup> Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the Petitioner filed a timely request for review of the Regional Director's Supplemental Decision asserting that the Regional Director erred by including the computer operator, electronics technician, and PC analyst classifications in the skilled maintenance unit. The Employer filed an opposition. On January 11, 2006, the Board<sup>3</sup> granted review. The Employer filed a brief on review. The International Union of Operating Engineers (IUOE) and the Metropolitan Chicago Healthcare Council filed amicus briefs, and the Employer filed a brief in reply to the IUOE's amicus brief.

<sup>1</sup> Chairman Battista and Member Schaumber, Member Liebman dissenting.

<sup>2</sup> The Regional Director excluded certain other classifications, such as the information systems coordinator, clinical systems coordinator, systems integration specialist, and program analyst, finding their skills and duties were technical in nature and involved the use of independent judgment requiring the exercise of specialized training. The Employer filed a request for review disputing the Regional Director's findings in this regard, but later withdrew it.

<sup>3</sup> Chairman Battista, Member Liebman, and Member Schaumber.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

After careful consideration of the entire record, including the Employer's brief on review, the amicus briefs, and the reply brief, we conclude that the Employer's eight computer operators are not skilled maintenance employees. Therefore, they need not be included in the petitioned-for unit. Because we find that the computer operators are not skilled maintenance employees, we deem it unnecessary at this time to pass on the skilled maintenance status of the electronics technician and PC analyst positions. Rather, the status of those positions may best be resolved through the use of the Board's challenge procedure. Accordingly, we remand this case to the Regional Director for further action consistent with this Decision.

**Facts**

*A. The Building Services Employees*

The Employer is an acute care hospital whose facilities consist of several buildings on one campus in Joliet, Illinois. The Petitioner seeks to represent a unit of approximately 15 skilled maintenance employees in the Employer's building services department. Among the skilled maintenance employees are six to seven operating engineers, one refrigeration mechanic, three to four electricians, and six to seven maintenance mechanics. The building services employees operate out of the sub-basement level of the main hospital building, where they report to duty. Director of Building Services Rich Kunkelman supervises these employees on a day-to-day basis.

The operating engineers perform maintenance and service repairs on heating, ventilating, and air conditioning (AC) systems, and maintain the facility's incinerator. The refrigeration mechanic is responsible for boilers, chillers, and other refrigeration equipment. The refrigeration mechanic spends 90 percent of his time installing and maintaining this equipment. The electricians inspect, repair, modify, and maintain the electrical/electronic systems, circuits, and equipment. The maintenance mechanics perform maintenance service and repairs in the areas of plumbing, carpentry, painting, plastering, machine servicing, and electrical or vehicle servicing.

All of the building services employees wear uniforms provided by the Hospital, are paid on an hourly basis, and tend to work throughout the Hospital campus. The Employer requires that the building services employees have at least a high school diploma and, preferably, 2 to 5 years of relevant work experience.

### *B. Information Services Department*

The information services department is primarily responsible for the repair, maintenance, monitoring, and installation of hardware, software, and computer-related applications. The information services employees generally assist with printers, fax machines, and computers. These employees are based in the lower level of the Employer's medical arts building, which is not attached to the main hospital building. The information services employees are supervised by Jesse Rojo, the director of information services, and Bob Paprockas, the manager.

The Employer's eight computer operators monitor the computer networks' online systems for problems. They process, monitor, print, and distribute various computer-generated hospital reports (such as billing and payroll reports). They operate the employee "help desk" and also respond to routine computer hardware problems throughout the facility. They use hand tools, such as screwdrivers, to install or remove cables linking computers to printers and other peripheral devices. The computer operators wear business-casual attire, are required to be available on a 24-hour-a-day, 7-day-a-week basis, and are paid on an hourly basis. The Employer requires computer operators to have a high school diploma or its equivalent and 2 years of computer-related experience.

The one electronics technician/data processing employee repairs and maintains personal computers (PCs) and peripheral equipment. This employee installs and repairs the Employer's network equipment. The electronics technician works throughout the Hospital campus to service defective PCs and sometimes will bring such devices back to the shop if necessary. In order to perform the job, this employee must use a variety of tools that are routinely required for the repair of electrical and computer-based devices.<sup>4</sup> The electronics technician works the day shift and is paid on an hourly basis.<sup>5</sup> In addition to a high school diploma and 2 years' experience, the Employer requires the electronics technician to have completed a formal electronics program, focusing on the electronics and circuitry used in computer service and maintenance.

There is one PC analyst in the information services department who is primarily responsible for the installation and support of the PC hardware and software. The analyst spends most, if not all, of her time planning, organizing, and effectuating the systematic upgrade or new installation of PC software and hardware. The analyst

must be available for emergency consultations. The analyst generally works throughout the Hospital. This salaried employee works the day shift and is required to wear formal business attire. The PC analyst must have a bachelor's degree in computer science or equivalent technical training and at least 6 months of previous experience installing PC hardware and software.

### *Regional Director's Supplemental Decision*

On remand, the Regional Director concluded that, under the Board's Health Care Rule, the employees in the disputed classifications possessed the types of skills, and were required to perform similar levels of duties, as those of the employees in the acknowledged skilled maintenance classifications. In this respect, the Regional Director, after finding that the Hospital's computer system was an "integral and necessary part of the physical plant," concluded that the computer operators, electronics technician, and PC analyst provided support, maintenance, and installation services on the Hospital's computer network, and used many of the same types of tools that are used by the skilled maintenance employees in the building services department. Moreover, the Regional Director found that the information services employees at issue worked independently throughout the Employer's facilities as do the building services employees, and that they have skill levels that are comparable to those of some of the skilled maintenance employees in the building services department. Accordingly, the Regional Director included the disputed classifications in the skilled maintenance unit.

The Petitioner contends that the three disputed positions neither possess the skills nor perform the kinds of job duties common to other skilled maintenance employees. We find merit in this contention with regard to the computer operators.

### *Analysis*

The Board, in its Health Care Rule issued on April 21, 1989, determined that in acute care hospitals, eight units, including a unit of all skilled maintenance employees, can be appropriate for collective-bargaining purposes. Board's Rules and Regulations Sec. 103.30; 54 Fed. Reg. 16336, 16347-16348, 284 NLRB 1579, 1596-1597 (1989).<sup>6</sup> In "Collective-Bargaining Units in the Health Care Industry: Second Notice of Proposed Rulemaking," the Board described the evidence it had gathered as showing that skilled maintenance employees are those who are generally engaged in the operation, maintenance, and repair of a hospital's physical plant systems, such as

<sup>4</sup> The specific types of tools that the electronics technician uses are not specified.

<sup>5</sup> This position earns more on an hourly basis than the computer operators.

<sup>6</sup> The validity of the Rule was upheld by the United States Supreme Court in *American Hospital Assn. v. NLRB*, 499 U.S. 606 (1991).

heating, ventilation, AC, refrigeration, electrical, plumbing, and mechanical, or the trainees, helpers, and assistants of such employees. 53 Fed. Reg. 33900, 33920–33924, 284 NLRB 1527, 1557, 1561 (1988).<sup>7</sup>

In evaluating whether certain classifications of employees should be included in a skilled maintenance unit, the focus is not on the traditional community-of-interest standard utilized in industries outside of the health care arena. Instead, the Board looks to whether the disputed employees possess the types of skills and are required to perform, at similar skill levels, the kinds of job duties common to other skilled maintenance classifications, or whether the disputed employees are helpers or assistants to other employees included in the skilled maintenance unit. *St. Luke's Health Care Assn.*, 312 NLRB 139, 141 (1993). Moreover, another factor that is relevant to a skilled maintenance analysis is whether the disputed employees actually perform work on a hospital's physical plant. It is not necessary to reach that issue here, however, because we find, based on the facts before us, that the computer operators neither possess the types of skills nor perform the kinds of job duties common to other skilled maintenance classifications; further, the facts do not support a finding that the disputed employees are either helpers or assistants to the employees included in the skilled maintenance unit.<sup>8</sup> Accordingly, the computer operators shall be excluded from the petitioned-for unit.

It is clear that computer operators do not engage in traditional skilled maintenance duties; that is, they do not perform any heating, electrical, plumbing, or similar repairs. Instead, the computer operators monitor and maintain the online systems of the Employer's computer network. In so doing, they respond to routine hardware problems throughout the hospital, where they may be required to correct minor printer problems or swap a computer or printer. Therefore, unlike the skilled maintenance employees in the building services department

who are responsible for, among other things, diagnosing problems with machinery, such as boilers and chillers, the computer operators simply remove the inoperable device and replace it, or they engage in more routine tasks such as clearing printer paper jams and adjusting toner. The computer operators do not make any electronic diagnoses or repair faulty devices. Moreover, whereas the building services employees must use a variety of tools in the performance of their duties, the computer operators only occasionally use a screwdriver to remove cables from a printer or a wall jack.

Furthermore, the computer operators are responsible for generating various reports, such as billing and payroll reports, a task that is not common to other skilled maintenance employees and appears to require little, if any, mechanical skill. Also, as a result of their "help desk" duties, the computer operators, unlike the building services employees, have more than "incidental contact" with employees outside of their department. 284 NLRB at 1558 (skilled maintenance employees have brief and incidental contact with employees outside of their department).

In light of the above, we find that the computer operators here neither possess skills nor perform duties similar to those possessed and performed by skilled maintenance employees. There is neither evidence establishing that the computer operators engage in skilled maintenance work, nor evidence showing that they "fill the position of a trainee or serve as a helper or assistant to skilled maintenance employees in the performance of their work." *Ingalls Memorial Hospital*, 309 NLRB 393, 397 (1992). Rather, we conclude that the computer operators perform work of a routine nature, which requires no formal education or training. *Jewish Hospital of St. Louis*, 305 NLRB 955 (1991) (denying review of the Regional Director's decision to exclude "round technicians," who delivered paper and made minor printer adjustments, such as changing ribbons and adjusting toner, from the skilled maintenance unit because their work was of a routine nature).

Having found that the computer operators are not required to be included in the skilled maintenance unit,<sup>9</sup> we find it unnecessary to pass on the Regional Director's inclusion of the one PC analyst and one electronics technician in such a unit. Therefore, we direct that those two positions be allowed to vote by challenged ballot.<sup>10</sup>

<sup>7</sup> After Congress enacted the Health Care Amendments, Sec. 2(14) of the Act, the Board considered the placement of some computer operators in a health care setting. See, e.g., *Seton Medical Center*, 221 NLRB 120 (1975) (data processing employees do not have a community of interest distinct from other business office clericals); *Trumbull Memorial Hospital*, 218 NLRB 796, 797 (1975) (computer operator and programmer classifications found to be business office clerical positions, and thus excluded from the petitioned-for unit of nonprofessional employees); *St. Francis Hospital*, 219 NLRB 963, 964 (1975) (computer operators found to be business office clericals). However, the Board did not purport to resolve every conceivable unit placement issue concerning computer operators and related positions. Therefore, the placement of such positions is determined on a case-by-case basis.

<sup>8</sup> As such, we find it unnecessary to pass on the Regional Director's additional finding that the Employer's computer system is an "integral and necessary part of the physical plant" system.

<sup>9</sup> The IUOE contends that the computer operators belong in a unit of business office clericals. We find it unnecessary to pass on this contention.

<sup>10</sup> The PC analyst and electronics technician comprise 11 percent of the voting unit.

## DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

Accordingly, we remand this case to the Regional Director for action consistent with this Decision on Review and Order.

## ORDER

It is ordered that this proceeding is remanded to the Regional Director for Region 13 for action consistent with the Decision on Review and Order.

Dated, Washington, D.C. June 26, 2007

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Peter N. Kirsanow, Member

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Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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Wilma B. Liebman, Member